

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

TERESA PICHOFF, as Special Administrator  
of the Estate of BRUCE PICHOFF, Deceased

PLAINTIFF

v.

Civil No. 07-5145

QHG OF SPRINGDALE, INC. d/b/a  
NORTHWEST HEALTH SYSTEM a/k/a  
NORTHWEST MEDICAL CENTER OF WASHINGTON  
COUNTY, and TRIAD HOSPITALS INC.

DEFENDANTS

O R D E R

Now on this 7th day of January, 2008, comes on for consideration **Defendants' Motion To Dismiss Plaintiff's Complaint** (document #9), and from said motion, and the response thereto, the Court finds and orders as follows:

1. This is a case arising under the Employee Retirement Income Security Act ("ERISA"). In addition to the ERISA claims, plaintiff's Complaint sets forth claims for negligence, breach of fiduciary duty, and fraud arising under state law. Defendants now move for dismissal of these claims, contending that they are preempted by ERISA. Plaintiff responds that the motion should be denied because she has amended her Complaint and removed these claims.

2. The Court has reviewed the Amended Complaint, and finds that it does not include causes of action arising under state law, which would, as defendants point out, be preempted by ERISA. While merely amending a complaint and dropping out certain claims is not as precise a way of removing them from the case as

dismissal would be, it is clear that plaintiff does not intend to pursue the dropped claims. The Court, therefore, finds that defendants' motion should be granted.

**IT IS THEREFORE ORDERED** that **Defendants' Motion To Dismiss Plaintiff's Complaint** (document #9) is **granted**, and plaintiff's claims for negligence, breach of fiduciary duty, and fraud - to the extent those claims arise under the laws of the State of Arkansas - are hereby **dismissed**. Plaintiff's claims arising under ERISA remain pending for adjudication.

**IT IS SO ORDERED.**

/s/ Jimm Larry Hendren  
**JIMM LARRY HENDREN**  
**UNITED STATES DISTRICT JUDGE**